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## The Electoral College in the American Nation

Boyd J. Jentzsch  
*Utah State University*

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THE ELECTORAL COLLEGE IN THE AMERICAN NATION  
Boyd L. Jentzsch

Senior Thesis  
Honors Program

Approved

The Electoral College is an anachronism and the world has a way of sooner or later--generally later--sloughing off anachronisms, but it is anything but inevitable that the human condition is thereby made more tolerable or the union more perfect.<sup>1</sup>

### Introduction

Democracy in America is often guided by the visible forces of the moment. Dangers are too often seen in the context of political interest--when fire is seen, the hoses of democratic action come wheeling out. But there is no excitement in smoke alone. The near constitutional crisis of the 1968 Presidential elections, (when the strong third party candidacy of George Wallace threatened to throw the election into the House of Representatives), caused a lot of smoke and a spark of flame. The alarm was sounded and the volunteer firemen from the halls of Congress and Capitol Hill responded. The standers-by, the self-made experts, the institutional geniuses, and the media reporters-turned-commentators all clamored together in offerings of support and advice. Though the fire is cold embers now--the smoke still trails upward because the dry tinder remains tinder still.

The Founding Fathers were tempered by Locke's justification of revolution, by Cook's beliefs in constitutionalism, and Montesquieu's theory of separation of governmental powers when they wrote the Constitution. But in no particular did they take greater pride than in the device they invented for the election of a President. They viewed it as a means of peaceful, continual revolution and the essence and crowning glory of the system, done by peaceful assemblies, free discussion, and the ballot.

But the system, later to become known as the Electoral College, had flaws, and was, as Thomas Jefferson had said, "the most dangerous blot on our Constitution."<sup>2</sup> Today it is called an oxcart method of selecting Space Age Presidents and suffers attacks from many quarters. But as the apparent fires abated, so too did the volunteer firemen. The vices and virtues of the system can now be studied, analyzed, and debated by cooler heads, and perhaps reason, not do-something-now-expediency, will prevail. At a later date, when the complexities and variables have been studied and weighed and the reports are all in, maybe, just maybe, our volunteer firemen will rush into action as once before, this time armed with an effective, but safe tool to extract the tinder forever and replace it with non-flammables. But there is only smoke now--faintly visible and growing dimmer. It remains to be seen whether the firemen will rush into action before fire rises from the smoke once more.

#### Origins: The Federating Principle

The origins of the Electoral College and the reasons for its form can be found in history, some of which are stated here. The purpose in reciting history is, of course, to shed some light on the present. But the past, in itself, cannot be an adequate guide for the present or the future unless it provides relevant, viable answers to modern problems. I believe some of these answers can be found in the debates, plans, and compromises surrounding the 1787 Constitutional Convention in Philadelphia.

As I recall history, the summer of 1787 was a time of debate, deliberation, and compromise for the fifty-five men who met in



convention to deliver in infancy a nation that could grow to maturity among the family of nations. They brought with them a firm belief in a written constitution--a known law superior to the acts or decrees of any officer or organ of government, with a specific declaration of natural and civil rights.

Many an idea was formed and many more died in the State House and nearby taverns of Philadelphia. But throughout the sweltering summer one idea was ever present in the minds and deeds of those who came: that a stronger union must be welded amongst the thirteen states, if the nation were to survive.

The Articles of Confederation were an instrument of revolutionary freedom rather than union. "Conceived in the spirit of liberty, they did not provide for the exertion of power necessary to hold the colonies-turned-states together."<sup>3</sup> Under them the nation languished as the states acted independently, with little regard for the nation as a whole, often encroaching upon those "certain unalienable rights" of individuals, especially if they were from some other state. There was no national legal power to constrain them.

However, if the most eminent men in America came to Philadelphia to strengthen the Union, they were also pluralists, believing in a number of small political units rather than a single, centralized government. They believed that power divided is power inhibited; that power inhibited is tyranny prevented.

With this in mind, the summer was spent trying to find the best balance. None of the framers went to the convention determined to create a federal system. But what emerged late in September was a federal

nation--a cross between confederacy and consolidation, "a social compact," as John Quincy Adams had said, based "upon principles never before attempted on earth," yet one that would prove acceptable, workable, and enduring.<sup>4</sup>

In the choosing of the form of government, there was a controversy over the relative power of large and small states. The large states wanted a voice in the national government commensurate with the size of their population. The small states, however, feared lest the large populace of the other states form a legislative majority and, during a less than friendly mood, strip them of their resources, territory, and identity.

From this debate the notion of a bicameral legislature, one house representing population, the other representing "equal" states, emerged. The Great Compromise, as it came to be known, was an accommodation between the confederate principles of the Articles of Confederation and the total consolidation of the states into a national government (the Virginia Plan).

It was

a confirmation of the states as states, as communities that never had been and never would be sovereign nations, and yet always had been and still meant to be discrete, self-conscious, indestructible units of political and social organization. It was also a confirmation of the Union as union, as a nation that was more than a tight confederacy of sovereignties that shared a common destiny, and yet less than a consolidation of malleable components.<sup>5</sup>

In sum, the Great Compromise was the longest constitutional step ever taken in the process of creating a new kind of compound nation. It was the heart of the federating bargain, wherein one house of the legislature represented the people, the other represented the states.

If the states could not have survived by themselves, an American nation formed in the late Eighteenth Century would have been meaningless

and impossible to form without them. The states were the building blocks of the nation. But they were not shapeless, faceless blocks. They were centers of individual culture, of unique institutions and home rule. If they had been required to give up this character in the forming of the nation, there never would have been a United States of America. But they struck a unique bargain and formed a union where power was shared by the state and national governments. The states were never meant to be vassals of the common government, nor for the national government to be ruled by the states. Each was meant to be an integral part of the other, performing separate functions, or working concurrently in hues of cooperation tailored to the needs of the individual function.

This was to be a new kind of nation, a federal republic, with two major levels of government, each supreme in the areas of power assigned to it, each having the right to act directly upon the people from whom its power derives, each constitutionally protected from encroachment or destruction by the other.<sup>6</sup> (See the Tenth Amendment to the Constitution.)

At the core of the federating bargain were the states. They were constitutionally recognized as political individuals, created by the will of their people, and thus entitled to a separate and equal voice in the common government. They were given this in the Senate, and, as shall be seen, in the election of the President.

After the form of the legislature had been decided in July, the method of selecting the President had yet to be agreed upon. As in the case of the legislature the scheme had to strike a politically viable balance between large states and small. The federal principle of the

Great Compromise now served as a guide. An ingenious method utilizing "electors" was formed and accepted in September. (It was the desire of the Convention delegates that the electors be enlightened property holders. These two conditions being met it was hoped they would use their best wisdom in voting for the President (and Vice President). However, it is not the qualifications of the electors that are important here, but the number.) The number of electors in each state was to be equal to its total representation in Congress. In effect this meant that the voice in the selection of the President resided not solely with the people, but was shared with the states. This, then, was the extension of the Great Compromise to the election of the President. The people were to have their part in the presidential elections by the vote of the electors that were equal to the number of Representatives in Congress (which were apportioned on a population basis). The remaining two electors in each state (which coincided with the state's two senators) were to represent the will of the states as political entities in the election process.

That the states were to have a voice in the Presidential elections was intended by the founding fathers can be evidenced not only in the way the Great Compromise was used as a guide in selecting a method to elect the President, but also in the electoral history immediately following the adoption of the constitution. The first few Presidential elections utilized a system wherein the winner in a Congressional district received its electoral vote. Also, the candidate who received the largest number of votes in the state got as a bonus two additional electoral votes. This was clearly a way of giving the states, as political individuals, a voice in the elections.

That the number of electors in each state is no accidental or casual happening can also be seen by the fact that James Madison, a prominent voice at the convention, regarded the bonus votes given in these first elections as the logical extension of the federating idea--giving the states an electoral role of their own.

### Present Form

From these perspectives, then we move to an examination of the Electoral College itself. Under attack, this method of selecting the President faces extinction or major alterations. But what is it? What has been its historical impact? What are its vices or virtues? And what should be its place, if any, in modern America?

In my examination of the Presidential election process I have chosen to eliminate from discussion the Presidential primaries. This is because of the breadth of subject matter and because it is a convenient and natural dividing point. However, complete electoral reform and democratization would mean little if this process is not closely examined and reformed, as needed, also.

Presently, the Electoral College system is a patchwork of tradition mixed with constitutional and state law. All working together, they mean that each state has the same number of electors as its total representation in Congress. The method of selecting the electors is left to the states. (Constitutional provision.) These electors are selected on a general statewide straight-ticket basis (except in Maine). Each voter casts one vote for the Republican, Democratic, or third Party Electors. The party receiving the most popular votes thus receives all of that state's electoral votes, (tradition made into state law). In most states, however, the elector is under no legal obligation to vote for the party's

candidate (a traditional prerogative). If no candidate receives a majority of the Electoral College, the decision goes to the House of Representatives, which chooses from the three persons having the most electoral votes, each state having one vote (a constitutional provision).

### Shaping the Electoral Process

This system has tended to create a multitude of side effects not foreseen or intended by the Founding Fathers. But the effects are both profound and far reaching and have to a large extent shaped and textured the American political landscape. Yet, if the effect has been profound it has also been largely unstudied or selectively ignored. The debates in the august chambers of Congress show that, for the most part, little is known either quantitatively or qualitatively about the realities of the Electoral College (see January 1970, Congressional Digest). Cliches abound, surrounded by high sounding ideals and little investigation. Thus in reforming the Electoral College "there is a possibility, not yet fully appreciated, that the entire political makeup of the country might be affected in ways yet unanticipated and unexplored."<sup>7</sup>

Now I turn to a direct examination of the more important aspects of the Electoral College. The most obvious of the effects has been the strengthening of a two-party system and its collateral effect of limiting the political viability of third parties as office-seeking organizations. The authors of the Constitution had not foreseen the rise of national "factions" or parties. By the election of 1800, however, parties dominated the political scene. Electors, whom the framers had expected to be distinguished citizens, had become party puppets, pledged in advance to vote for their respective party's candidate. To exert greater influence

in the Presidential election, the states--under the control of political parties--gradually adopted the custom of giving all the state's electoral votes to the candidate receiving the highest popular vote. Consequently, the system would serve a party as long as it had broad enough support to give it a reasonable chance of winning. Historically, then, a party that remained viable had to master the technique of promising everything to everybody, (contradictions nonetheless abounding). For some reason the American public could stomach two such anomalies, but not three. Besides, two amorphous parties can efficiently divide between them all the middle ground, so strategically necessary to appeal to because that is where the greatest number of voters are. This leaves little for a third party to gain from appealing to the middle of the road. As a result, third parties tend to appeal to the extreme left or right with narrow platforms and limited support.

Whenever third parties have gained substantial support, however, the winner-take-all practice in the Electoral College has been effective in shortening their lifetime. The Presidency is the focal point of national political parties. There is little sense in running for President if one is going to come in third or fourth (unless it is to influence the major party platforms, which has been the strategy of George Wallace in 1968 and 1972). (In this case the purpose is to force accommodation and compromise, which shall be discussed later.)

The only time a third party has remained effective over an extended period of time is when one of the dominant national parties is on the wane or in an area of one-party domination. Usually, the third party then takes one of two courses: (1) It broadens its appeal and



platform and becomes one of two dominant national parties (as the Republican party in the 1850's), or (2) its platform or major objectives are absorbed into the major party platforms (as the Socialist party in the early 1900's) and the party fades from the political scene.

The benefits of this can easily be seen when viewed more closely. With two parties sharply competing for the political grand prize, the Presidency, they must appeal to a great variety of interests, as before mentioned. This has produced some measure of political unity and harmony which is vital to heterogeneous America. Relatively homogeneous countries (when compared to the U.S.A.) as France and Italy are severely divided politically, with numerous parties and factions. Were such the case in so diverse a country as this, the nation would be close to political chaos, with each interest, racial, or ethnic group forming a party. Coalitions to form a government--with their characteristic instability--would rule the day. But the Electoral College has effectively limited this fragmentation.

It is not an instinctive desire for unity--but a fear of losing all impact outside the two-parties--which keeps this delicate machine together and which promotes compromise, cooperation, and understanding of the interests and views which must be reflected in the total party. Give those factions the chance for impact outside the two parties and commonsense dictates the development of many parties.<sup>8</sup>

### Positioning Political Power

Another important aspect of the Electoral College is its influence on the positioning of political power. One of the traditional cliches is that the Electoral college gives small states more power in Presidential elections than their size warrants. This is because each state has three electoral votes no matter what its population. For example, Alaska with



250,000 people has three electoral votes and Utah with one million people has four electoral votes. Thus, 85,000 people in Alaska and 250,000 people in Utah each represent one electoral vote. The disparity is larger the greater the difference in the size of the states.

But simple mathematics fail to take into account important voting patterns and political strategy. In reality, these far outweigh the seeming electoral advantage of smaller states and tip the scale heavily to the side of the most populous states. If we define voting power as "the ability to affect decisions through the process of voting"<sup>9</sup> we find that New York and California voters have much more power than voters in smaller states. Party competition in the big industrial states is vigorous and very small percentages of the popular vote generally swing the election. Thus, a candidate who can carry California or Ohio by a very small plurality or majority gets a greater number of electoral votes than he can by carrying several smaller states by larger popular majorities. Therefore the candidates will campaign more vigorously and try harder to appeal to these voters than they will those in smaller states.

This concentration of power in the big states also gives inordinate power to cohesive racial, interest, or ethnic groups in the urban areas. Party strength is very closely divided in the large states. With the tendency of an election to be won by very small percentages, the urban racial, ethnic, and interest groups that tend to vote en bloc can and very often do decide an election. They are thus wooed and courted by all sides. If a candidate expects to win he must recognize the special interests of these groups. (President Nixon in 1968 was a rare exception to this rule.)

Because the urban, bloc voting groups can determine who wins in a large state, and because large states are crucial Electoral College building blocks for a Presidential victory, the system usually favors liberal candidates who more effectively appeal to these groups than do conservatives.

Money is often equated with power. This is especially true in political campaigns. There is no adequate or meaningful measuring stick to determine how much money in the form of campaign contributions equates with measurable influence on the election, but the phenomenon is noticeable. Money is concentrated in the large industrial states (for obvious reasons), and much is given to the candidates who best champion their special interests. This gives these states an apparent influential advantage. If our original equation is correct, and it seems to be, this means that the large states have additional disproportionate influence in Presidential elections. However, this has rarely been studied in depth and much more needs to be known before such statements can be made conclusively.

Another important placing of power, although it seems to be more diffuse, is upon those who vote in states where there is a small voter turnout. Since the electoral vote is primarily based upon population, and certain states (mainly in the South) have low voter turnouts, this gives those who vote a much larger voice than they would normally have. It is easily seen, for example that in the 1968 elections, a voter in South Carolina with a 45.8% turnout, will have a much larger voice than a voter in Minnesota with a 75.8% turnout.

The Electoral College has also helped determine who will be candidates for the Presidency (and Vice Presidency). A prospective

candidate from a large pivotal state, and thus supposedly capable of delivering that state's large electoral vote, is obviously more attractive than an equally qualified candidate from a smaller state or one where the party already has strong support.

Reviewing the above (by no means an all inclusive list) it becomes apparent that not only has the Electoral College modified the election process, but it also governs campaign strategies. It goes without saying that a candidate will spend most of his time and money in those states where he will receive the largest number of electoral votes, and in effect ignore the smaller states.

The last few years have seen a shift of the electoral votes from the Northeast and Midwest to Texas and the Far West. This is due to the shifting pattern of population. These are areas with significantly different traditions and political ideologies. The immediate effect of this shift will probably not be great, but if the trend continues, and all factors point in that direction, it could show measurable influence on future candidates for the Presidency.

#### Attacking the System

There are two main objections to the Electoral College, and both deal with the apparent warping of the popular will.

The first fault is the real possibility that a person can receive a majority of the popular vote without receiving a majority of the electoral vote. (This happened only in 1876.) How this could happen is fairly obvious and needs no lengthy explanation here. At the heart of this objection is the practice of giving all the states electoral votes to the popular vote winner. This in effect, disenfranchises a

large portion of the electorate. For example the 125,000 Alabamans (mostly blacks) who voted for Hubert Humphrey in 1968 showed no reflection of their will in the Electoral College because the state's entire electoral vote went to George Wallace, who received 690,000 popular votes. A more powerful illustration here would be the 1968 Presidential election in New Jersey. Nixon received 1,325,467 votes, while Humphrey received 1,264,206--a plurality for Nixon of only 61,261 votes. The question arises of whether or not those 1,264,206 voters who sided with Humphrey should be given some voice in the Electoral College.

The second major criticism is that whenever a third party candidate becomes a strong contender, there is a distinct possibility that no candidate will receive a majority of the electoral vote and the election will be thrown into the House of Representatives. Here, each state has one vote, and the country could find itself "led by a man whose only mandate sprang from the compromises he had made with twenty-six congressional delegations."<sup>10</sup> In such a case the third party will be in a position to "auction" off his votes to the highest bidder. Such a happening could be catastrophic and is highly undesirable.

Two lesser objections of the system also need some examination. The Constitution lets the states determine the method of choosing electors. Once chosen, however, there is no law (except in a few states) requiring them to vote for the popular vote winner. This is an inexcusable fault. The popular will should not be allowed to be negated by a rebellious elector, as happened in 1956, 1960, and 1968.

The other criticism centers around the fact that the Electoral College is based on population rather than the number of voters. This

gives inordinate ballot power to voters in states with small voter turnouts, as mentioned previously.

#### Propositions in Replacement: The Past

Most Americans have never been satisfied with the way they elected their President. By 1966, 513 resolutions for constitutional amendments to reform the Electoral College had been introduced into the House of Representatives. Of these a full 100 called for election of the President by popular vote.<sup>11</sup> Only one reform proposal, the Twelfth Amendment in 1804, succeeded. This amendment was made to rectify a serious problem created by the original provision governing the election of the President in the Constitution. The Constitution stated that person having the highest number of electoral votes would be President and the person receiving the second highest would be Vice President. This caused considerable embarrassment to the Republican-Democratic candidate for President, Thomas Jefferson, when in the election of 1800 Aaron Burr, the Republican-Democratic candidate for Vice President, received the same number of electoral votes. The contest was accordingly thrown into the House of Representatives, where on the thirty-sixth ballot, and after the influence of Alexander Hamilton was exercised in his behalf, Jefferson was finally elected President. The Twelfth Amendment was designed to prevent a recurrence of this situation.

#### Propositions in Replacement: The Present

The next step in the examination of the Electoral College is an investigation of the proposals most recently before Congress.

This will be done in the order of their popularity , but not necessarily virtue.

Before proceeding, however, it should be understood that since one third of our Presidents have not had a majority of the popular vote (three since 1945), and the trend appears likely to continue, most reformers have agreed on a plurality of 40% of the popular vote as being enough to gain the Presidency. (The election of 1860 is the only exception to this cut-off.)

Celler/Bayh Plan.--Rep. Celler, D-NY, and Sen. Bayh, D-Ind, were the principal backers of this plan. It passed the House on a 339-79 vote and was bottled up in committee in the Senate where it died. This is the simplest and most popular reform scheme. (A 1968 Gallup Poll showed 81% of the nation in favor and only 12% against it.) The plan calls for popular election of the President. If no candidate receives 40% of the vote, there would be a runoff election between the two candidates receiving the most votes.

The proponents of the plan label it as the spread of democracy, the extension of the franchise to all, (by counting every vote, although it may have been cast for the loser), where everyone's vote is equal. They contend that the majority will would always prevail, and a Wallace-like spoiler could no longer threaten to disrupt the system--that if a candidate is elected by a 40% plus plurality of Americans, wherever they are concentrated, he deserves election.

It is easily seen that such a plan would liberate the black vote in the South, because they would no longer be disenfranchised by the winner-take-all practice. They would have a greater reason to vote,

knowing their vote would count, and the voter turnout in the South would probably increase markedly with a decline of the disproportionate influence of the South in elections. A companion advantage here is that the election would be based upon the number of voters instead of the total population.

On balance, however, there are several factors that do not make this plan as attractive as it first appears. First and foremost, the popular election plan eliminates the role of the states in the selecting of the President. In the beginning of this paper I spent a great deal of space reviewing the federalist origins and nature of the union. The elimination of the role of the states in the electoral process would strike another serious blow at this eroding American institution. The popular election of the President is more than merely a different way to tabulate votes, it is the removal of this basic underpinning of the federating bargain. In short, it amounts to a sharp change in the form of our federal republic. It effectively changes the dual citizenship (state and national) each American has, to a single national citizenship. "This balanced and symmetrical structure of dual citizenship and dual representation in the Congress applies consistently in the parallel structure of dual representation established by the Electoral College."<sup>12</sup>

The question then devolves to one of what role the states should play in the American union--and it must be remembered that is is a union as well as a nation. The argument goes: "Are states, today, so important that a President must have support everywhere, or nearly everywhere, to govern fairly or successfully? The Governor of a state does not need a majority of the counties to win--why should the



President need the support of the states to win?" In answer, I would say that the county is a convenient subdivision of the state, but the state is not a convenient subdivision of the nation. The nature of American federalism is such that there are certain separations of power and functions between the federal and state governments. The states were not, and are constitutionally guaranteed against becoming, the vassals of the national government. A part of this guarantee was that the states would play a part in the election of the president, that thereby they may have further voice in the common government, and a check on an executive who might otherwise try to subjugate the states to his will and the will of the national government.

The appeal to popular election is an appeal to democratization and majoritarianism. Democracy in this context means: the popular majority decides. But is simple majoritarianism the kind of democracy Americans have come to know and accept? What of our institutions? The Senate is certainly not majoritarian or even truly democratic. It is based upon the equal representation of the states. The Supreme Court is not majoritarian, it is not even elected. What of the two-thirds rule in the Senate and House for proposing an amendment, which must be ratified by three-fourths of the states? What of the many two-thirds and three-fourths rules written into the parliamentary procedures of our national and state legislatures? These are certainly more than simple majoritarianisms--if they are thus undemocratic why not sweep them away--including the Supreme Court and the Senate?

In truth these institutions and devices tell us that throughout history we have perceived other values in government than its reflection of simple majorities of the moment, which are in any event not easy to find or may be whipped up on demand. We have lived this democracy as a rather complex sum of these values, not just an uncompromising majoritarianism.<sup>13</sup>



We have believed that the power of the majority should not be absolute--that it must be tempered by minority rights. We have also believed that "power should be distributed more widely...rest on wide-spread consent rather than teetering on the knife-edge of a transient 51%."14 (Or 41%, if the 40% rule is used.)

The way a President views his constituency governs his actions and programs. What if, in his election, he received a numerical majority of the nation but had the uncomfortable knowledge that the geographical victory was confined to one or two states? Would not this psychological effect upon him be , in itself, important?

If the Founding Fathers in their wisdom had not foreseen these problems, they had at least stumbled upon a plan for electing the President that would, at the same time, protect us against majoritarian tyranny and centralized governmental rule.

The Celler/Bayh amendment would probably weaken the two-party system, encourage the entrance of splinter parties, and candidates, and stimulate ideological divisions in a system that has usually avoided them. The Electoral College, because of the winner-take-all rule, makes us compose our differences within the framework of the two-party system. With popular election, the inducements to prior accommodation--the settling of differences in conventions and other gatherings would be fewer, because the various factions would be assured some impact outside the two major parties, if necessary, and the formation of splinter parties would be encouraged. This could be ruinous to the American nation in a day when there is little national unity and the subdivided populace is ever more willing to use extreme actions to gain their goals.

Accommodation, among parties under a multi-party system, would be difficult to achieve, much more difficult than in present intra-party squabbles. Instead of prospective party leaders vying for acceptance among the factions of the party, with the prize being the position of national party leader, the different factions would be parties in their own right. The heads of these parties or factions would already be more or less national party leaders. They would thus have their personal positions to defend. Compromise or accommodation could cost them their leadership roles (rather than gaining one). They would therefore have much less to gain from compromise than they do under the present system.

An effect of multi-parties on party structure would be the centralizing of power within the party. In a political scene crowded with numerous parties this would be necessary in order to retain control and political effectiveness. However, the more centralized the party structure the less freedom for differences and pluralism, especially at the state and local levels, thus limiting participation (because only certain views would be represented). Accompanying this would be the necessity of strong party discipline to hold party congressional members in line in order to obtain the desired votes on programs before the legislative bodies. In time, this would cause parties to be structured along ideological lines and dedicated to certain programs rather than focusing on election of the executive, with characteristic radical swings in governmental actions whenever a new party gains the White House. Such a structure is evident in Great Britain and is certainly not superior to our present system.

The idea that the two-party system is so firmly entrenched in American society that it will always prevail is both politically naive and ignorant of past and present historical trends. Third parties are a common part of the American political landscape. One, the Republican party, even rose to a position of national prominence and domination. There is often talk about third and fourth party movements in the country (eg. Wallace and McCarthy, 1972), and were it not for fear of loss of impact outside the Electoral College--and severe limitations within it, much more of this would be seen and heard. Without the Electoral College these parties could materialize much easier and last much longer.

There is a very vocal criticism of the present two-party system, saying that our differences are now too numerous and too large to be contained within such a system. This criticism fails to recognize the many variations of our national parties to meet local and regional interests. Even a shallow examination of the national parties invalidates the claim that they only represent two ideas. Never have so many held so diverse ideas under the same political banner.

The Celler/Bayh amendment provides that if no candidate receives a plurality greater than 40%, there would be a runoff of the top two. With little inducement for inter-party unity following the conventions, and with the proliferation of splinter parties, the runoff election would become a typical part of American politics. This would cause a tremendous increase in campaign expenditures at a time when it is generally agreed that too much is being spent on campaigns under the present system. Coalitions would be formed, not in conventions, but between the general election and the runoff. However, one of the reasons for the

abolition of the Electoral College is that a third party candidate could throw the election into the House of Representatives. While direct election would foreclose this possibility, it would by no means strip a third party candidate like George Wallace of all power. His ten million votes would be as much a prize (and an instrument of political blackmail) in a runoff election as in the House of Representatives under the Electoral College.

Urban minority groups would lose political power, in the popular election scheme, and so would the liberal candidates supported by them. With the emphasis on actual votes rather than electoral votes, the power of minority bloc voting groups to decide an election would be greatly diminished making it easier for conservative candidates to ignore their demands and needs. The liberal candidates who generally find their strongest and most strategic support in these groups would have to correspondingly shift their appeal to the right in order to obtain greater support from the majority--which is generally in the middle of the political spectrum. The minorities, stripped of their disproportionate power, would be just that. Whether that is good or bad, the effect would be noticeable.

Certain critics of the popular election plan have stated that if the role of the states is removed the President would be put in the psychological position of "I am the people's President," and thus give him an advantage over Congress, who do not represent the populace as a whole. (Although this may be somewhat the case today, how much more so would it be under popular election?) These critics feel that, given this advantage, a President could take his mandate from the people and construe it to mean that since he alone represents the entire popular

will, his programs should not be impeded or changed by the Congress. This, they say could be the rise of Caesarism, or the beginnings of monarchical rule.

I do not feel that the immediate effects of popular election would be that extreme because of the democratic institutions ingrained in the American mind. But, I raise the question--what effect would popular election have in the long run? Given the slowness of democratic action, is it not probable that the "New Generation" will grow tired of the legislative process (and there are unmistakeable signs that this is happening)? Given the tradition of the Presidential initiative in legislative programs will not the people turn more and more to him to get their programs enacted? With a mandate springing from the people from a tradition of popular election, will not this put the President--willingly or otherwise--in a political position of having to exert a real as well as psychological pressure over Congress to insure passage of his programs? Certainly, there is not enough information to make any findings in this area conclusive, but the criticism warrants close examination and some serious rethinking.

There are other criticisms of the Celler/Bayh amendment but I have tried to restrain my comments to the most noteworthy. However, I think that it can be readily seen that this proposal amounts to a major restructuring of the American union, a strong blow--maybe even the death knell--to federalism and the individual nature of the states, and is no less dangerous to the Republic than the system it is supposed to replace.

Proportional Plan--The Proportional Plan was backed at first by President Nixon. The plan was rejected by the House in favor of the

Celler proposal. Essentially, the plan provides for the division of the electoral vote in each state, equivalent to the share of the popular vote. Divisions of the Electoral votes of less than  $1/1,000$  would be dropped. The office of "Electors" would be abolished and the electoral vote would be automatically registered. A candidate would have to receive a plurality greater than 40% of the Electoral College to win. If no candidate does so, Congress, in joint session, would decide from the two candidates receiving the most electoral votes, each congressman having one vote.

This plan would effectively remove all but the most remote possibility of a President taking office without a plurality of the popular vote. It gives some influence to the states on the outcome of the election by retaining the present method of allocating electoral votes. It also removes the evil of errant electors.

The  $1/1,000$  rule in dividing the electoral vote, would however, open Pandora's box of splinter parties and loose them on the political scene, with all the attendant evils before mentioned.

The provision that a joint session of Congress would decide in the case no candidate received a 40% plurality, with each congressman having one vote, is certainly preferable to the present system. It does not, however, insure against a George Wallace and removes the decision from where it belongs--with the people and the states.

In reality, then, this plan is just a reworking of the popular election scheme to give the states some voice in the process. It seems to be a compromise between the need for reform and the realities of the extreme political difficulty of abolishing the Electoral College.

District Plan--The District Plan was thought to be the best and fairest plan of electing the President by Thomas Jefferson, James Madison, Daniel Webster, and John Quincy Adams. This plan was used extensively in the first few Presidential elections but was eased out in favor of the winner-take-all system. Maine adopted a modified version of this plan in 1969--the only state with such a provision.

This plan provides for the abolition of the office of elector, but retention of the electoral votes. The plurality winner in each Congressional district would receive that district's electoral vote. In addition, the plurality winner in the state would receive, as a bonus, the state's two additional electoral votes. If no candidate received a majority in the Electoral College, there would be a runoff election between the top three contenders.

The district plan is a realization that the states should not--and will not--give up their role in the federal republic. The proponents of the plan view the two bonus votes as the hallmark of federalism, insuring that the states will always have a voice in the Presidential elections.

Obviously, the winner-take-all principle must apply somewhere. Whether the winner gains his victory by the margin of one popular vote or one electoral vote, he is still the winner and gains the Presidency--there is no shared or divided participation here. The ideal point at which to say the principle should apply is where the ultimate outcome reflects the popular will and also provides the benefit of limiting the proliferation and spread of third parties. The Congressional district seems to fit this definition better than any other. To apply the principle at any lower level would have little



effect on third parties and to apply at a higher lever(the state) would invite misrepresentation of the popular will.

Third parties would be limited, under this plan, but not to the extent they are at the present. As a result third parties and minority group choices would be able to show some national effect as long as they could gain plurality support in a Congressional district. This would help retain some power in minority group districts, such as Harlem. The popular will of the people would be more accurately reflected, and thus the blacks in Alabama, that we mentioned before, would have more reason to vote. (This plan was tried in Michigan in the 1892 elections. Normally a Republican stronghold, five of the fourteen electoral votes went to the Democrats. The system was changed before the next election.)

The possibility of a President receiving a majority of the popular vote but losing in the Electoral College would plummet markedly if this plan were accepted.

The possibility of a runoff election, because no candidate received a majority of the electoral vote, would also decrease. But in, the case that a runoff was necessary, the undesirable situation of a strong third party candidate "selling" his votes to the highest bidder between the general and runoff elections is dramatically lessened. This is because the runoff would be between the top three contenders. The spectre of an impasse, of endless runoffs with no candidate ever receiving a majority, can be seen here, but it is very remote. Perhaps if the majority rule were changed to a 40% rule as in the other plans, there would be no spectre.

Critics of the district plan say that its purpose can be easily defeated by gerrymandering. This seems to be its major fault. If,



however, a 1965 Celler proposal were passed with this plan, requiring that congressional districts be reasonably compact and contiguous territory, the worst offenses would be eliminated. In any event, we have lived with gerrymandering throughout recent history and it seems somewhat hypocritical to say it is all right to elect our congressmen this way but not the President. If we really don't like the practice, why not abolish it now, through pressure on our state legislatures, instead of just disliking the idea of our Presidents being elected under its influence?

This plan becomes much more fair when viewed in the light of reapportionment. Present efforts at reapportionment, if expanded and closely monitored, would lessen the disparity of voter power from one district to the next, and on a national level (through fair distribution of representation in Congress, according to population) from state to state. The problem of disproportionate voting power caused by low turnout would be minimized because only the congressional district need have a plurality winner for a voter's choice to be registered--not the entire state. This should encourage higher voter turnout.

As a whole, I feel that this plan best eliminates the evils of our present system without introducing greater evils of its own. Its two best characteristics, the retention of the federal principle and limitation of splinter groups, keeps the best, and most desirable parts of the present Electoral College.

Federal System Plan---The Federal System Plan, better known as the Dole/Eagleton Amendment, after its two Senate sponsors, is the most complicated of the proposed reforms. It is a plan that is trying to

strike the best balance between reflection of the popular will and insurance that the states or large geographical areas are also represented.

In essence, the plan requires that the winner receive a plurality of the popular vote, and either: (1) pluralities in more than 50% of the states, or (2) pluralities in combinations of states with more than 50% of the voters. If the above requirements were not met the election then goes to the Electoral College, which would be altered so that in a deadlock a third party candidate's votes would be divided between the top two, in such a way as to guarantee that one would receive a majority.

This plan reflects a deep concern for both federal structure and broad geographical support for the President. It is one solution to the problem of simple majoritarianism. When either of these two provisions are met it is assured that the President has gained office only after it has been manifested that he has a very broad following throughout the nation. This would help insure much more stability and confidence in office. If this plan were coupled with a single six-year term as President, it may help to eliminate much of the maneuvering now necessary to keep the President's original constituency satisfied, as well as constantly vying for more support with re-election in mind.

Third parties would find little restriction under this plan.

The seeming complexity of the plan would--and did--rule it out of serious consideration, but perhaps upon a closer look it could be the best plan put forward with most of the qualities desirable in an amendment. At this point, the strongest recommendation that can be made for it is that it recognizes and deals effectively with the federal and geographical factors in the electing of a president.

### Conclusions and Recommendations

The Electoral College needs reforming. But in the pell mell rush to do something, many factors should be weighed carefully. The federal nature of our union must not be trifled with lightly nor our country be allowed to be divided amongst a multi-party system. The office or personal prerogatives of the elector should be abolished.

The reform of the Electoral College, then should do away with its evils such as the misrepresentation of the popular will, but retain its virtues such as the limiting of the life and proliferation of third parties.

There are benefits for both large and small states in the Electoral College. The small states have a psychological feeling of equality of states, as in the Senate, and the large states have disproportionate elective power.

It simply happens that the Electoral College can satisfy, at once, the symbolic aspirations and remote hopes of the small states, and the present practical needs of the large ones. Not many human institutions work out quite as artistically as that.<sup>15</sup>

"The sad truth seems to be that no solution can satisfy all the objections and reconcile all conflicts."<sup>16</sup>

"If retention of the Electoral College exposes us to political chaos, its abolition does not insure us against it."<sup>17</sup>

## NOTES

<sup>1</sup>Richard H. Rovere, "Letter From Washington," The New Yorker (October 4, 1968), 128.

<sup>2</sup>"The Constitution: All Power to the Voters?," Newsweek (September 29, 1969), 23.

<sup>3</sup>Richard H. Leach, American Federalism (New York: W. W. Norton and Company, Inc., 1970), 3.

<sup>4</sup>Clinton Rossiter, 1787, The Grand Convention (New York: The New American Library, 1968), 64.

<sup>5</sup>Ibid., 165.

<sup>6</sup>Leach, 1.

<sup>7</sup>"How not to elect a President--Time Essay," Time (May 4, 1970), 29.

<sup>8</sup>"The Question of U. S. Electoral Reform," The Congressional Digest (January, 1970). (The entire issue.)

<sup>9</sup>Alexander M. Bickel, "Wait a Minute: The Popular Election of Future Presidents," The New Republic (May 10, 1969).

<sup>10</sup>Rovere, 128.

<sup>11</sup>"The Anachronistic Electoral System," The New Republic (June 1, 1968).

<sup>12</sup>Ibid.

<sup>13</sup>"Misreading Democracy," The New Republic (September 27, 1969), 10.

<sup>14</sup>Ibid.

<sup>15</sup>Bickel.

<sup>16</sup>"How not to elect a President."

<sup>17</sup>Rovere, 129.

## NOTES ON SOURCES

The Congressional Digest, January 10, 1970 issue, is a valuable insight into what members of the House think of the various proposals as well as the history and present form of the Electoral College.

The Time essay of May 4, 1970 is the best overall evaluation of the Electoral College that I have found in periodicals.

Some important insights into the reforms can be found in Richard H. Rovere's article in The New Yorker on October 4, 1969.

1787--The Grand Convention was an indispensable source for the understanding of the federal principle.

A check in the Reader's Guide to Periodical Literature reveals numerous articles on the Electoral College reform. However, most are not well thought through, and at best repetitious. The best articles are quoted or paraphrased here.

There are few books on the subject. Overall, much new research, study, and thought needs to be done on the subject.